

Michael A. Grisham
grisham.michael@dorsey.com
DORSEY & WHITNEY LLP
1031 West Fourth Avenue, Suite 600
Anchorage, AK 99501
(907) 276-4557

Attorneys for Plaintiff The Aleut Corporation

UNITED STATES DISTRICT COURT
FOR THE STATE OF ALASKA

THE ALEUT CORPORATION

Plaintiff,

vs.

DUNLAP TOWING COMPANY

Defendant.

Case No. 3:_____

COMPLAINT IN ADMIRALTY

Plaintiff The Aleut Corporation brings this Complaint against Dunlap Towing Company, *in personam*, and for its causes of action states and avers as follows:

JURISDICTION AND VENUE

1. Plaintiff The Aleut Corporation (“TAC”), is a corporation organized under the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1606 *et seq.* (“ANCSA”) and Alaska law, is headquartered in Anchorage, Alaska, and is in all ways qualified to maintain this action.

2. Defendant Dunlap Towing Company (“Dunlap”), is a Washington corporation with its principal place of business in LaConner, Washington.

3. This is an *in personam* action that is within the admiralty and maritime jurisdiction of this Court pursuant to 28 U.S.C. § 1333, Rule 9(d) of the Federal Rules of Civil Procedure, and Rules C and D of the Supplemental Rules for Admiralty and

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Maritime Claims.

4. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for all related state law claims. In addition to supplemental jurisdiction, this Court has original jurisdiction over all non-admiralty claims pursuant to 28 U.S.C. § 1332, because (1) complete diversity of citizenship exists and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Venue lies within the United States District Court for the District of Alaska.

ALLEGATIONS COMMON TO ALL COUNTS

BACKGROUND

6. TAC owns the marine docking and fueling facilities in Adak, Alaska.

7. On Sunday, March 18, 2018, the Tug MALOLO with loaded deck barge TONGASS PROVIDER made up starboard side to was making the approach to the west side of Pier Five, in Adak, Alaska, which is owned by TAC. During the mooring evolution, the operator of the Tug MALOLO negligently caused the vessel TONGASS PROVIDER to allide with Pier Five.

8. The operator of the Tug MALOLO failed to navigate and operate the Tug with due regard for the prevailing circumstances and failed to properly direct the movements of the Tug and barge so as to prevent allision.

9. More specifically, the operator of the Tug MALOLO failed to use all available means appropriate to the prevailing circumstances and conditions to prevent the allision, including the following:

- a. Failed to keep the Tug MALOLO under control so as to prevent the allision;
- b. Failed to keep and maintain an alert and efficient lookout;
- c. Failed to properly measure the distance between the Tug MALOLO, the

barge TONGASS PROVIDER and Pier Five during the mooring evolution;

- d. Navigated too closely to Pier Five;
- e. Failed to factor the effects of the tides, currents, wind, or a combination of these factors;
- f. Approached Pier Five at an excessive rate of speed under the circumstances; and
- g. Failed to take timely or effective steps to avoid striking Pier Five when the danger and risk of such excessive speed was or should have been apparent.

10. Defendant Dunlap, as owner of the Tug MALOLO, is vicariously liable for the negligent actions of the Tug's operator and liable for the damage caused by the Tug when it struck the dock at the time of the allision.

11. The above-described allision was due to no fault or negligence on the part of the Plaintiff, its agents, servants, or employees, or any fault or defect in the design, structure, or operation of Pier Five.

12. As a result of the described allision, Pier Five of the Dock and its pilings suffered significant damage, substantially interfering with its use and function, causing Plaintiff to suffer monetary and other damage.

FIRST CAUSE OF ACTION

NEGLIGENCE

13. The preceding paragraphs are incorporated by reference as if fully set forth herein.

14. The above-described conduct by Defendant Dunlap or for which Defendant Dunlap is responsible failed to meet the applicable standard of due care under the federal admiralty common law of negligence.

15. Plaintiff has been damaged by Defendant's negligence in an amount

exceeding \$75,000, with the exact amount to be proven at trial.

SECOND CAUSE OF ACTION
NEGLIGENCE UNDER STATE LAW

16. The preceding paragraphs are incorporated by reference as if fully set forth herein.

17. The above-described conduct by Defendant Dunlap or for which Defendant Dunlap is responsible failed to meet the applicable standard of due care under the State of Alaska common law of negligence.

18. Plaintiff has been damaged by Defendant's negligence in an amount exceeding \$75,000, with the exact amount to be proven at trial.

WHEREFORE, Plaintiff prays for the following relief:

1. That this Court enter Judgment in Plaintiff's favor in the amount of its claim, as described, against Defendant Dunlap, *in personam*, and;
2. That this Court award Plaintiff pre-judgment and post-judgment interest, in addition to disbursements, costs, and attorney's fees incurred in pursuit of this action, and;
3. That the Court grant to Plaintiff such other and further relief as the Court may deem just and proper.

DATED this 18th day of March, 2020, at Anchorage, Alaska.

DORSEY & WHITNEY LLP

By: /s/ Michael Grisham
Michael A. Grisham, ABA #9411104
grisham.michael@dorsey.com

DORSEY & WHITNEY LLP
1031 West Fourth Avenue
Suite 600
Anchorage, AK 99501-5907
(907) 276-4557